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Paper No. 5

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**COPY MAILED**

**AUG 05 2002**

In re Application of  
McHugh, et al.  
Application No. 10/068,076  
Filed: February 6, 2002  
Attorney Docket Number: 89.0486

**OFFICE OF PETITIONS**

**DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)**

This is in response to the petition filed on May 6, 2002 under 37 CFR §1.47(a).

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on February 6, 2002, without an executed oath or declaration. Accordingly, on March 4, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a \$130.00 surcharge for its late filing.

In response, on May 6, 2002, applicant filed a petition, \$130.00 surcharge, and a partially executed oath.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor.

Applicant lacks item (1) as set forth above. Rule 47 applicant states inventor D'Arcy can not be located. Rule 47 applicant provided an affidavit from Cherita Persons-Grimstead that indicates rule 47 applicant contacted co-inventor Mc Hugh for a current address on inventor D'Arcy. Inventor McHugh indicated he did not have any current information on inventor D'Arcy but recommended contacting RMS the former employer of inventor D'Arcy. A series of e-mails indicate RMS was unable to locate the personnel file of Des D'Arcy.

Rule 47 applicant has failed to provide sufficient facts that would prove diligent efforts were made to locate inventor D'Arcy. Additional efforts need to be demonstrated to illustrate diligent effort. Rule 47 applicant may wish to consult telephone directories,

the Internet, national registries etc. in an effort to locate the inventor. Rule 47 applicant has solely relied on the former employer (RMS) of inventor D'Arcy to provide any forwarding information.

Furthermore, where an inventor does not execute the oath or declaration, rule 47 applicant must provide the most recent home address of the inventor. See MPEP 605.03. Inventor D'Arcy's most recent home address must be provided to enable the Office to communicate directly with the inventor if necessary. Rule 47 applicant can be submitted by a supplemental declaration pursuant to 37 CFR 1.67 or an application data sheet pursuant to 37 CFR 1.76.

Upon renewed petition, rule 47 applicant may wish to state any additional actions that have been taken in an attempt to locate inventor D'Arcy to establish diligent effort was used to locate inventor D'Arcy. If inventor D'Arcy is located a copy of the patent application should be forwarded to his mailing address.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.



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